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Part V

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Federal Aviation Administration

Controlled Visual Flight Rules; Withdrawal of En Route Proposals

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 1, 71, 91, and 105]

[Docket No. 18605; Reference Notice No. 78-19]

Controlled Visual Flight Rules; Withdrawal of En Route Proposals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The FAA hereby withdraws Notice of Proposed Rule Making 78-19, which was published in the **Federal Register** (44 FR 1322) on January 4, 1979. Notice 78-19 proposed to lower the "floor" of the continental positive control area (CPCA) from 18,000 feet mean sea level (MSL) to 12,500 feet or 10,000 feet MSL across the continental United States and require visual flight rules (VFR) aircraft in the airspace between the lowered CPCA "floor" and 18,000 feet MSL to comply with air traffic control (ATC) instructions. Detailed "controlled visual flight" (CVF) rules and additional restructuring of the airspace system were also proposed. The notice, as part of a comprehensive, system-wide study of airspace safety, invited public participation in the selection of the best means of effectively reducing the collision risk in the enroute airspace above 10,000 feet MSL. The commitment of the FAA to find effective means of reducing this risk was stated in Notice 78-19. This commitment is not lessened by withdrawal of these proposals. FAA's review of public comments as well as its own further analysis indicates that the specific proposals in the notice may not be the most effective means of reducing the risk. This is the reason for the withdrawal. A great deal of study was done before notice 78-19 was issued. The FAA fully recognized the complexity of the task it set out to accomplish. The regulatory process is designed to effectively involve the public in rule-making actions. The response to Notice 78-19 clearly demonstrates the efficacy of the public participation in FAA's rule-making process. Through the public comments received, the FAA has become convinced that effective alternatives exist for achieving the increased safety that was the objective of Notice 78-19. Therefore, in conjunction with this withdrawal, the FAA intends to examine alternative approaches to reducing the collision risk. This program will stress efforts on the part of the FAA toward increased enforcement and pilot education, and improved operating procedures, and, only where appropriate, will result in additional regulatory proposals. Close consultation with affected users and the travelling public will continue as part of this expanded effort.

In addition to the specific enroute regulatory proposals described above, Notice 78-19 advised the public that the FAA, in separate and individual actions, will propose new Group II Terminal Control Areas (TCAs) for public comment, and will propose to raise the tops of existing TCAs. This withdrawal of the enroute regulatory proposals does not affect the FAA's intent to identify and respond to the terminal airspace collision risk on a site-by-site basis.

DATES: Notice 78-19 withdrawal is effective September 13, 1979.

ADDRESSES: Persons wishing to comment on this withdrawal may submit their comments to Federal Aviation Administration, Attn: Airspace and Air Traffic Rules Division (AAT-200), Air Traffic Service, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: William E. Broadwater, Airspace and Air Traffic Rules Divison (AAT-200), Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3721.

SUPPLEMENTARY INFORMATION:

The Scope of the Withdrawal

The proposals in Notice 78-19 were published as a single, comprehensive package for public comment as part of the Administrator's broad review of the national airspace system. Many valuable comments were received concerning the effectiveness of this combined package of proposals. This action to withdraw Notice 78-19 addresses only the advisability of adopting the entire set of requirements as proposed, and is not a judgment concerning possible future FAA proposals, that may contain some of the elements of the withdrawn proposals, where justified by expanded review of the national airspace system. As stated above, this withdrawal does not affect FAA's case-by-case review of the need for terminal control areas.

The Proposed Rules

Notice 78-19 proposed amendments to Parts 1, 71, 91, and 105 of the Federal Aviation Regulations (14 CFR Parts 1, 71, 91, and 105). The proposed changes to Part 1 would have amended the definition of "controlled airspace" to include "positive control areas," added a definition of "controlled visual flight," and added a definition of "positive controlled airspace."

Part 71 would have been amended to (1) lower the continental positive control area (CPCA) from 18,000 feet mean sea level (MSL) to 10,000 feet MSL east of the Mississippi River and a portion of California, and to 12,500 feet MSL over the rest of the continental United States; and (2) redefine the description of terminal control area airspace assignments to provide that all TCAs extend upwards to the "floor" of the lowered CPCA unless otherwise specified. A related change to the description of "control zone" was proposed, as was deletion of the concept of Group III TCAs.

The operating and equipment rules in Part 91 would have been amended to implement a comprehensive "controlled visual flight" concept intended to reduce the "mix" of controlled and uncontrolled aircraft in the enroute altitudes above 10,000 feet (or 12,500 feet) MSL. Proposed § 91.111, if adopted, would have required each person operating an aircraft (other than a glider) in the new positive controlled airspace at and below 18,000 feet MSL to notify ATC before entering that airspace, file a flight plan, comply with ATC clearances and instructions, advise ATC if compliance with clearances and instructions may cause violation of the visual flight rules, leave the positive controlled airspace if two-way radio communications fails, and advise ATC of the loss of navigational capability. In addition to the currently required altitude reporting transponder, the proposal would have required that all aircraft have the equipment now required in a Group I TCA (i.e., an operable VOR or TACAN navigational receiver, and an operable two-way radio capable of communicating with ATC on appropriate frequencies), in order to operate in the lowered positive controlled airspace. Consistent with this proposed expansion of enroute positive control, a relaxation of the current 250-knot speed limit was proposed for aircraft that are in a TCA which abuts the "floor" of the lowered positive controlled airspace, if the aircraft is at least 5,000 feet above the airport elevation and is cleared for altitudes above 10,000 feet MSL within the TCA.

Notice 78-19 also proposed to amend Part 105 of the Federal Aviation Regulations to prohibit parachute jumps in or into a TCA without, or in violation of, an ATC authorization.

Summary of Comments

In response to the proposals in Notice 78–19, a volume of public comments was received that was unprecedented not only in its magnitude—over 43,000 in all—but also in its value as an information base for future FAA analysis of the enroute collision risk. After reviewing the wide range of suggestions received, the FAA concludes that alternatives beyond the scope of Notice 78–19 may be desirable.

Alternatives suggested. Virtually all segments of the aviation community acknowledged the safety objectives of Notice 78–19. Numerous suggestions were received for achieving the safety objectives of the notice in other ways. Many of the comments recognized that the task of preserving the current high level of safety in the national airspace system requires additional monitoring of that system, exploration of alternatives' approaches, and continuing consultation between the FAA, the airspace users, and the travelling public. This dialogue was greatly accelerated by Notice 7–19, and has resulted in a wide range of proposed alternatives for addressing the remaining enroute midair collision potential.

Climb corridors. The most widely recommended alternative was to leave the floor of the continental positive control area at 18,000 feet MSL and approach the problem of protecting air carriers from unknown VFR aircraft "from the ground up," that is, by establishing climb corridors leading into the enroute airspace from the tops of TCAs. It was argued that this alternative would lead to the same level of safety that would be furnished by a coast-to-coast airspace rule, without consuming the enormous volume of airspace that would be involved in a nationwide rule. These comments pointed out that climb corridors can be shown on aeronautical charts, can be implemented quickly, are less costly, and may save fuel. The FAA is considering this recommendation as a possible means of achieving the objective of Notice 78–19. Where it is determined, in an individual TCA, that climb corridors may be implemented consistent with the air traffic flow requirements at a given airport, and structured in a manner consistent with public comments concerning that TCA, the climb corridor concept will be explored at that location.

Other CVF Concepts. Several commenters recommended lowering the floor of the continental positive control area to 14,500 feet and the adoption of rules requiring communication with ATC, compliance with ATC instructions, and the furnishing of traffic advisories by ATC. Variations of this recommendation, involving different degrees of involvement of VFR aircraft with the ATC system, were submitted for FAA consideration. These recommendations will be considered as part of the expanded study of enroute airspace.

Adequacy of the "See and Avoid" Concept. Numerous comments supported the current "see and avoid" concept in the enroute airspace and contended that, when coupled with radar advisory service (which points out traffic to participating aircraft) and a wide range of other measures, such as improved pilot and controller training, the "see and avoid" concept can be highly effective. The FAA agrees that, in the enroute altitudes in question, the current low risk of collision in vast areas of the nation speaks well for the "see and avoid" concept. Adherence to the hemispheric altitude rules of Part 91, and extensive use of advisory radar service are effective aids to the separation of aircraft. However, where effective alternative means of assuring separation can be devised, the FAA believes that the "see and avoid" concept should not be the sole means of assuring safe separation, and that additional proposals should be developed.

Increased Enforcement and Education. Several comments urged that expanded positive control not be used as a substitute for pilot education and improved enforcement of existing regulations. The FAA agrees that an effective enforcement program is fundamental to effective management of the national airspace system and that increased education and enforcement should be stressed. Where existing enforcement procedures can be improved or effective new procedures devised, the enforcement effort will be expanded. Where improved education can increase compliance with regulations, this effort will also be broadened. For example, the comments indicate that certain operators may not be aware that an altitude reporting transponder has long been required for VFR as well as IFR operation in controlled airspace above 12,500 feet MSL. This appears to be an area in which increased education is needed.

Improved Operational Procedures. As a further alternative to expanded ATC restrictions on VFR operations, numerous suggestions were received concerning the procedures that are used by pilots and air traffic controllers. These comments included recommendations that the coordination between controllers be improved, that aircraft be separated by performance, that pilot and controller responsibilities be further clarified, and that radio communication procedures be improved to reduce lack of understanding between pilots and controllers. The FAA believes that continuing review of these alternatives to regulation should proceed along with the increased emphasis on effective regulatory solutions. As stated below, this includes establishment of nonregulatory terminal radar service areas (TRSAs), where justified on a case-by-case basis.

Safety Considerations. Many comments expressed concern that lowering the "floor" of enroute positive controlled airspace would not materially improve safety in the altitudes between 10,000 feet and 18,000 feet MSL. These comments stated that the relatively low traffic density in that stratum, the fact that many VFR aircraft already are receiving enroute radar advisories, and the fact that voluntary participation in these ATC services has been helpful, all raise serious questions regarding the added margin of safety that would result from mandatory CVF requirements at those altitudes.

In addition, a large number of comments were concerned that the lowering of positive controlled airspace, as proposed, may have a negative effect on safety for VFR operations. These persons believed that the ability of VFR pilots to stay above bad weather conditions (which often top in the 10,000-to-12,500-foot level), would be degraded, and that pilots would be forced to operate below the enroute airspace "floor" in poor visibility and with reduced ability to avoid hazardous weather. A high degree of concern was raised regarding the "compression" effect of the lowered "floor" over mountainous areas, particularly in the western and northwestern United States. This "compression effect," it was argued, would increase VFR traffic density below the positive control "floor," force nonparticipating aircraft to remain in dangerous mountain turbulence, and limit the maneuvering options available in the event of an inflight emergency such as engine failure. The potential effect of expanded positive control on human error in the ATC system or in the cockpit was also raised by many persons. These comments stated that, as controller workload rises, the potential for system errors also increases, and that, for relatively unsophisticated pilots operating under CVF, the added cockpit workload could degrade the ability to see and avoid other traffic. Comments questioned the ability of many VFR

pilots to make effective use of CVF services without disproportionate use of controller time. Concerns regarding the reliability of equipment used in VFR operations were also expressed. These comments pointed out that certain equipment performance and reliability standards for IFR operations do not apply to VFR operations. The conclusion in some of these comments was that addition of unknown numbers of VFR aircraft to the controller's responsibility could degrade the services furnished to IFR aircraft.

The FAA believes these concerns require further study to determine whether alternative proposals beyond the scope of those in Notice 78–19 would be effective.

Several commenters stated that there are substantial areas in the United States in which radio and radar coverage is not adequate in some of the altitudes between 10,000 or 12,500 feet MSFL and 18,000 feet MSL, and that the safety of operations in those areas would not be improved by the proposed rules. The FAA is reviewing this objection, and agrees that the burden of complying with CVF requirements, if otherwise justified, should not be extended to areas of impaired radio or radar coverage.

Several commenters recommended amendment of Part 91 to provide that the altitude reporting transponders now required above 12,500 feet MSL must be operated in flight. Contrary to the belief of these commenters, operation of that equipment is now required by § 91.24(b), which provides that the equipment must have an altitude reporting capability "that automatically replies" to ground interrogation. This is made clear by § 91.24(c), which provides for limited ATC authorization to deviate where the transponder is not "operating." This requirement will be emphasized through pilot education.

The En Route Collision Risk

Adequate identification of the enroute collision risk, and of the risk reduction that would result from imposition of CVF rules, is essential to sound regulatory decisions affecting the enroute airspace. Many comments stated that, while there may be a collision risk in the enroute airspace system between 10,000/12,500 feet MSL and 18,000 feet MSL, the FAA figures concerning reported near midair collisions (NMACs) do not demonstrate that this risk would be reduced by expanded positive control. These comments stated that the total enroute count of uncontrolled VFR aircraft is not known precisely, and that, without such a figure, a given NMAC rate does not conclusively show the actual collision risk as related to "real world" exposure. These comments recommended that better information be obtained concerning the density of uncontrolled VFR operations in the enroute altitudes for which expanded positive control is being considered.

The FAA agrees that continued refinement of its collision risk studies is appropriate. However, the FAA believes that the analysis done to date fully justifies the continued search for effective solutions. This withdrawal is based solely on FAA's assessment of the probable effectiveness of the proposals in Notice 78–19, and does not signify a reappraisal of the enroute collision risk since the notice was issued.

Several comments pointed out that the NMAC figures cited in the Notice have received extensive criticism and should be reviewed for accuracy. Before any further action is proposed, this review will be completed, incorporating NMAC information from not only the FAA, but also from the Department of Defense (DOD) and the National Aeronautics and Space Administration (NASA). To date, FAA review of its own information and DOD information has proceeded to the point that FAA is convinced that the collision potential in the affected enroute airspace justifies additional study to develop effective alternative solutions.

Conclusion

Considerable effort was expended by the FAA, and by members of the user community, on elements of the proposals contained in Notice 78–19 long before that Notice was issued. Substantial resources were also devoted to finalizing the proposals. The volume and quality of the public response has demonstrated the complexity of the task of further reducing the potential for midair collisions in the enroute airspace system. The response to Notice 78–19 also shows that the efforts which the Department of Transportation in general and the FAA in particular have devoted to the formulation of an effective rule-making process were well spent. The FAA will initiate further action to reduce the risk of collision in the enroute environment. Because of the process Notice 78–19 has gone through, this reduction will come about in a more effective manner. Following review of public comments and analysis of other data and information, the FAA has concluded that the proposals in Notice 78–19 may not be the best means of reducing the collision risk in the enroute environment. As a result, an expanded effort to seek more effective ways of reducing the collision risk is justified.

The task of continued analysis of the remaining enroute collision risk, and of developing effective means of reducing that risk, remains a high priority of the FAA. Withdrawal of Notice 78–19 reflects the need to continue to move forward in the search for appropriate solutions, and does not lessen the commitment to the search itself.

Emphasis On Terminal Airspace. Withdrawal of the package of enroute CVF proposals necessarily raises the question of how to best improve the safety of air carrier and other operations between the busy terminal environments and the high altitude enroute environment. Based on the comments discussed above, and on extensive public participation at 41 informal airspace meetings that were held across the country since the issuance of Notice 78–19, the FAA intends to continue to address the problem of terminal airspace safety by intensive study of each terminal area with direct public involvement. Where the studies indicate that a specific airspace configuration will improve the safety of terminal operations, an action to issue or revise a terminal control area will be proposed for public comment.

The FAA is accordingly continuing its emphasis on development of regulatory and nonregulatory (procedural) means of assuring the safe arrival and departure of aircraft in individual terminals. This includes the establishment of TRSAs where justified at specific locations. This reflects the fact that 69% of the total NMACs reported anywhere in the system between July 1, 1976, and November 30, 1978, occurred in terminal airspace.

The Role of Cost Considerations. Comments supporting Notice 78–19 in its entirety were received. One such comment strongly urged that the safety objectives in the Notice not be compromised by cost considerations. As stated below, cost is not the deciding factor in this withdrawal. Extensive review of docketed information indicates that, while the terminal airspace objectives referred to in the Notice should be pursued, the enroute CVF proposals may not be the best solution to reducing the enroute collision risk, and that withdrawal is consistent with the development of more effective measures. While cost factors were important considerations in assessing the reasonableness of the proposals, and will be considered in any future regulatory proposals affecting the airspace system, this decision to withdraw is not based on cost considerations, but rather reflects FAA's

intent to develop the most effective means of reducing the enroute collision risk.

The Withdrawal

In consideration of the foregoing, Notice 78–19 as published in the **Federal Register** (44 FR 1322) on January 4, 1979, is hereby withdrawn.

(Secs. 305, 306, 307, 313(a), 601, and 1110, Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1346, 1347, 1348, 1354(a), 1421 and 1522); sec. 6(c), Department of Transportation Act (49 U.S.C. §1655)(c)).

Note.—The FAA has determined that this document involves a proposed regulation which is significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for the proposed regulations is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT . . ."

Issued in Washington, D.C., on September 7, 1979.

Langhorne Bond,

Administrator.

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